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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,575	10/05/2001	Joseph C. Walsh	P 5.78(a) CVL	4977

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/23/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/972,575

Applicant(s)

WALSH ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11-18,20-22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-9,11,12,14-18,20-22 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 6 and 13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Election was made **without** traverse in Paper No. 5.

### *Claim Rejections - 35 USC § 102/103*

2. Claims 1, 2, 7, 8, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Stone (5314114). Stone teaches a body, a lid, a panel 56 being attached to the lid as shown in Fig. 4, and a sheet of material 50.

3. Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone.

Official Notice is taken that it is known in the art to make a container from plastic or provide coating with fluid imperious material for a container. It would have been obvious to one of ordinary skill in the art to make a container from plastic or provide coating with fluid imperious material for a container in Stone to provide security. ✓

4. Claims 14-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Graybill

(3187977). Graybill teaches a method of opening and closing a container comprising a body portion having first wall 2 and second wall 3B, a lid connected to the first wall 2 at line H, a hinged portion T' formed in the second wall (shown in Fig. 2; T is hinged to portion C'), moving the lid as shown in Fig. 3, moving the lid to a closing position as shown in Fig. 4, and releasable retaining the lid by engaging at least a portion of the hinge portion at W to a least a portion of the second wall.

Regarding claim 15, the lid in Graybill is a flip top insofar as claimed.

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Regarding claim 17, note that the hinge portions W is connected to T' via score lines (col. 4, lines 36-37).

Regarding claim 20, when moving the lid to an open position, the hinged portions W will misaligned via the score lines connected to portion T' as claimed.

7.4 5. Claims 1, 2, 4, 7, 8, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williamson (3073501) in view of Carr (2421141). Williamson teaches a body, a lid, a panel 42 formed in the lid, the moving of lid in the open position, a releasably retaining the lid in a closed position. Williamson meets all claimed limitations except for the sheet of material covering the hole. Carr teaches that it is known in the art to provide a bag (being the sheet of paper) inside a hinged container. It would have been obvious to one of ordinary skill in the art to provide a sheet of material covering the hole in Williamson as taught by Carr to provide an inner receptacle for holding contents.

6. Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williamson in view of Carr as set forth above, and further in view of Fleming. Fleming teaches that it is known in the art to provide a stationary and hinge portion separated by score lines. It would have been obvious to one of ordinary skill in the art to provide a stationary and hinge portion separated by score lines in the combination of Carr as taught by Fleming to secure the closure easily.

7. Claims 1, 2, 4, 5, 7-9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleming (2583211) in view of either Brooks (2434756) or Ignell(3168233). Fleming teaches body, a lid 3, a panel 7 engaging the hole with hinge portions defined by fold lines 7x. Fleming meets all claimed limitations except for the sheet of material covering the hole

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while the container being in an open position. Either Ignell or Brooks teaches that it is known in the art to provide an impervious material (the liner in Ignell and portion 16 in Brooks) covering the hole. It would have been obvious to one of ordinary skill in the art to provide an impervious material covering the hole in Fleming as taught by either Brooks or Ignell to provide added protection.

Regarding claim 2, it is noted that the lid in Fleming is considered a flip top as claimed.

Regarding claim 8, with respect to the second position in which product can be dispensed from the container, in the open position the container in Fleming, with the container in Fleming can be puncture elsewhere for dispensing, i.e., a straw can puncture the plastic membrane to dispense the contents. Furthermore, please note the contents in Ignell can be dispensed in the second open position by cutting the liner, while the liner still cover the hole as claimed. The claim(s) must be distinguished from the prior art in term of structure rather than function. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114.

### ***Response to Arguments***

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai  
Examiner  
Art Unit 3727



April 18, 2003